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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

DANIELLE C., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and JENZ G., Appellees.	2 CA-JV 2012-0016 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 19234300

Honorable Joan L. Wagener, Judge Pro Tempore

AFFIRMED

Emily Danies
Tucson
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General
By Michelle R. Nimmo
Tucson
Attorneys for Appellee Arizona
Department of Economic Security

B R A M M E R, Judge.

¶1 Appellant Danielle C. challenges the juvenile court's order of February 16, 2012, terminating her parental rights to her son, Jenz G., after she failed to appear at a pretrial conference on a motion to terminate her parental rights filed by the Arizona Department of Economic Security (ADES). Finding no error, we affirm.

¶2 We view the evidence in the light most favorable to upholding the factual findings upon which the juvenile court's order is based. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). In December 2011, ADES filed a motion to terminate Danielle's parental rights to Jenz, alleging she had abused or neglected him, A.R.S. § 8-533(B)(2), was unable to discharge her parental responsibilities due to mental illness or chronic substance abuse, § 8-533(B)(3), and was unable to remedy the circumstances that had caused him to remain in a court-ordered, out-of-home placement for fifteen months or longer, § 8-533(B)(8)(c). The state mailed Danielle notice that an initial hearing on the termination of her parental rights would be held on January 18, 2012, and, although she arrived ten minutes late, Danielle attended that hearing. At that hearing, the court warned her that if she failed to appear her absence could be deemed a waiver of her rights and that the court could "proceed based upon the record, including entering an order terminating [her] parental rights." Danielle also signed a form "Notice to Parent in Termination Action," which likewise advised her of the possibility of waiver and provided the dates for upcoming hearings, including a pretrial conference on February 16, 2012.

¶3 The conference on February 16 was scheduled to begin at 1:30 p.m., and when Danielle had not arrived by 1:45 p.m., the juvenile court questioned her attorney as to her whereabouts. He informed the court he had no idea "where she might be," and, on ADES's motion, the court decided to proceed in her absence. Later in the hearing

Danielle's attorney indicated she had called a family member and told him she was "running late." But, after receiving testimony from Danielle's case manager, the court concluded ADES had proven the allegations set forth in its petition to terminate and severance was in the child's best interest. It therefore terminated Danielle's parental rights to Jenz by minute entry order. The hearing ended at 2:04 p.m.

¶4 Thereafter, on February 22, Danielle's attorney filed a "motion to set aside default," in which he stated that, when he was leaving after the conference, he had seen Danielle coming into the court building. Two days later he met with her and "learned that [she] thought the hearing was set for two o'clock" and that she had waited "an unusually long period of time" for a bus before ultimately calling a friend to get a ride. On February 28, Danielle filed her notice of appeal from the juvenile court's February 16 minute entry order. Thereafter, on March 16, the court denied Danielle's motion to set aside the default.[1] Because Danielle had already filed her notice of appeal, this court concluded that court had been without jurisdiction to rule on the motion and suspended the appeal so that it could rule. It did so on June 15, again denying the motion. Danielle filed a notice of appeal from that order on July 5, more than fifteen days after the court's ruling. Therefore, we lack jurisdiction of the appeal from that order.[2] *See* Ariz. R. P.

[1]Although this ruling was made before either party filed its brief in this court, neither Danielle nor ADES informed us of this ruling in their briefing. In her brief on appeal, Danielle asserts the juvenile court may have ruled on the motion to set aside default in an amended minute entry dated March 5, 2012, in which it affirmed its February 16 minute entry order after making a minor typographical amendment. But, even if that minute entry had been a ruling on that issue, which it does not appear to have been given its cursory nature and the court's subsequent ruling, the court was without jurisdiction to rule on the motion because Danielle's filing of her notice of appeal had deprived that court of jurisdiction. *See* Ariz. R. P. Juv. Ct. 103(F).

[2]The notice of appeal filed also does not comply with the requirements of Rule 104(B), Ariz. R. P. Juv. Ct., which requires counsel to aver that he or she "communicated

Juv. Ct. 104(A); *In re Maricopa Cnty. Juv. Action No. JS-1109*, 26 Ariz. App. 518, 518, 549 P.2d 613, 613 (1976).

¶5 Section 8-537(C), A.R.S., provides that "[i]f a parent does not appear at the pretrial conference, status conference or termination adjudication hearing, the court, after determining that the parent has" received the requisite notice of the hearing and the consequences of failing to appear, including termination of the parental rights, "may find that the parent has waived the parent's legal rights and is deemed to have admitted the allegations of the petition by the failure to appear." The statute further provides the court then may terminate that parent's rights "based on the record and evidence presented." *Id.* A court may, however, "set aside an entry of default if there is 'good cause shown.'" *Christy A. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 299, ¶ 16, 173 P.3d 463, 468 (App. 2007), *quoting* Ariz. R. Civ. P. 55(c); *see also* Ariz. R. P. Juv. Ct. 64(C), 65(C)(6)(c), 66(D). We review for an abuse of discretion a court's decision whether such cause has been shown. *Christy A.*, 217 Ariz. 299, ¶ 19, 173 P.3d at 469.

¶6 On appeal, Danielle maintains "excusable neglect existed" in relation to her absence and the juvenile court therefore "erred in proceeding in Absentia." "Excusable neglect exists if the neglect or inadvertence 'is such as might be the act of a reasonably prudent person in the same circumstances.'" *Id.* ¶ 16, *quoting Ulibarri v. Gerstenberger*, 178 Ariz. 151, 163, 871 P.2d 698, 710 (App. 1993). We cannot say the court abused its discretion in concluding Danielle had not met that standard. She was advised in writing, and apparently orally, of the date and time of the hearing. And, because Danielle appeals only from the court's February 16 order, *see* Ariz. R. P. Juv. Ct. 104(A), (B), we can

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with the client after entry of the judgment being appealed, discussed the merits of the appeal and obtained authorization from the client to file this notice of appeal." Here counsel merely stated she had informed Danielle "by mail of the merits of the appeal and [Danielle] did not object."

consider only the evidence before the court at the time it made its decision, *see Lee v. Lee*, 133 Ariz. 118, 124, 649 P.2d 997, 1003 (App. 1982) ("The court of appeals acquires no jurisdiction to review matters not contained in the notice of appeal."), *accord Navajo Nation v. MacDonald*, 180 Ariz. 539, 547, 885 P.2d 1104, 1112 (App. 1994) (when plaintiff appealed before filing Rule 60, Ariz. R. Civ. P., motion, then did not file another notice of appeal from denial of motion, appellate court lacked jurisdiction to review denial). On that evidence—that Danielle was "running late"—we cannot say the court abused its discretion in concluding Danielle had not established good cause for her failure to appear. Moreover, Danielle does not challenge the sufficiency of the evidence presented to support the severance. Accordingly, the judgment of the court is affirmed.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge